REMARKS:

Status Of Claims

Claims 1-12 and 21-26 were previously pending, claims 1 and 7-11 have been amended, claims 21-26 have been withdrawn by the Examiner, and claims 27-32 have been added. Thus, claims 1-12 and 27-32 are currently pending in the application with claims 1, 27, and 31 being independent.

Office Action

In the office action, the Examiner suggested that claims 21-26 were directed to an invention that is independent or distinct from the originally claimed invention, and therefore withdrew claims 21-26 as being directed to a non-elected invention. As stated in the previous amendment, Applicant respectfully disagrees that claims 21-26 are directed to a non-elected invention. Again, Applicant asserts that adding limitations, clearly supported by the specification, while retaining original limitations should not be grounds for such a withdrawal.

The Examiner also rejected claims 1-3, 6-8, and 11 under 35 U.S.C. 102(b) as being anticipated by Maguire, U.S. Patent No. 3,881,832. Applicant respectfully asserts that the currently pending claims distinguish the present invention from the prior art made of record.

For example, claim 1 now recites "a grate [including] a flange protruding substantially horizontally from at least one crossbar adjacent a lower-most surface of the at least one crossbar". As clearly shown in Figures 3, 6, and 7, the flange extends substantially horizontally from the crossbar and adjacent a lower-most surface of the crossbar.

In contrast, as shown in the figures and disclosed in column 4, lines 5-13, Maguire's flange 23 extends upwardly from a downwardly extending shank member 22.

In fact, Maguire requires an upwardly beveled surface 24, because it "facilitates insertion of the attaching members into position with respect to the sewer grating". Therefore, Maguire actually teaches away from "a flange protruding substantially horizontally", as recited in claim 1.

Additionally, in paragraph 3, the Examiner incorrectly states "[t]here is a flange (23) protruding from the crossbar". In the preceding sentence, the Examiner identifies the crossbar using Maguire's reference numerals 15 and 16. As shown in the figures and disclosed starting in column 3, line 55, through column 4, line 13, Maguire's flange 23 protrudes, not from Maguire's cross bars 15,16, but from Maguire's downwardly extending shank member 22. Since Maguire's flange protrudes from the shank member 22, the Examiner's assertion that "[t]here is a flange (23) protruding from the crossbar" is simply incorrect. Furthermore, Maguire's flange is located, not "adjacent a lower-most surface", but well below a lower-most surface of Maguire's cross bars 15,16. In fact, Maguire's flanges are offset below the cross bars 15,16 by the downwardly extending shank members 22. Thus, Maguire simply cannot anticipate "a grate [including] a flange protruding substantially horizontally from at least one crossbar adjacent a lower-most surface of the at least one crossbar", as recited in claim 1.

Claim 7 now recites "wherein an upper-most surface of the grate does not extend substantially above an upper-most surface of the frame". As clearly shown in Figures 2, 5, and 7, the grate 12 is preferably flush with the frame 14.

In contrast, as clearly shown in the figures and disclosed in column 3, lines 3-8, Maguire's "protective insert 10 [extends] above a plane defined by the" frame 4. Furthermore, as disclosed in column 3, lines 28-40, Maguire requires "ends 18,19 [to be] deformed in a downward direction [in order to prevent] interference between the protective insert 10 and snow plows" that would otherwise snag on Maguire's upwardly extending protective insert 10, referred to by the Examiner as grate 10. Finally, Maguire's claims

claim a protective insert "comprising: a plurality of cross members [positioned] in overlaying relation on the upper edges of the" frame 4. Therefore, Maguire clearly envisioned his invention as sitting atop the frame 4. Thus, Maguire cannot anticipate "wherein an upper-most surface of the grate does not extend substantially above an upper-most surface of the frame", as claimed in claim 7.

Claim 8 now recites "wherein each crossbar includes a slanted side adjacent a substantially vertical sidewall with both the slanted side and the vertical sidewall being opposite the flange". The claimed structure is clearly shown in Figures 3 and 7, and described in detail in the specification.

In contrast, Maguire's only slanted surfaces 24,25 are located on Maguire's flange 23, and therefore cannot be opposite thereto. Thus, Maguire cannot anticipate "wherein each crossbar includes a slanted side adjacent a substantially vertical sidewall with both the slanted side and the vertical sidewall being opposite the flange", as claimed in claim 8.

The Examiner also rejected claims 4, 5, 9, 10, and 12 under 35 U.S.C. 103(a) as being unpatentable over Maguire. Applicant respectfully asserts that the currently pending claims distinguish the present invention from the prior art made of record. Specifically, claim 9 now recites "wherein the flange includes a hole operable to receive a bolt to secure the grate to the locking element and in turn secure the grate within the frame, such that as the bolt is rotated the locking element is drawn upwardly thereby reducing a distance between the grate and the locking element until the frame is captured between the grate and the locking element". Support for this amendment may be found, among other places, on page 7, lines 1-9.

In contrast, Maguire's locking element 23 is located a fixed distance from his protective insert 10, with the distance being fixed by the shank member 22. As disclosed in column 4, lines 20-26, as Maguire's "protective insert 10 is further urged downward with

respect to the sewer grating 4 the [locking elements or prong portions 23] snap into position there under precluding withdrawal of the protective insert". Therefore, Maguire's prong portions 23 hold the protective insert down, performing the function of the locking element of the present invention, but cannot be "drawn upwardly" as claimed in claim 9. In fact, successfully drawing Maguire's prong portions 23, or any of Maguire's other elements, upwardly, would simply tend to remove Maguire's protective insert 10 and/or sewer grating 4 from the watercourse, rather than "secure the grate withing the frame", as claimed in claim 9. Thus, Maguire does not disclose, suggest or make obvious "wherein the flange includes a hole operable to receive a bolt to secure the grate to the locking element and in turn secure the grate within the frame, such that as the bolt is rotated the locking element is drawn upwardly thereby reducing a distance between the grate and the locking element until the frame is squeezed between the grate and the locking element", as claimed in claim 9.

Claim 10 now recites "wherein the locking element includes a substantially horizontal member operable to receive the bolt and at least one substantially vertical member engaging the frame by sliding upwardly and behind the shelves". The claimed structure is clearly shown in Figures 2 and 7, and described in detail in the specification.

In contrast, the Examiner only repeats his assertion that the "horizontal member of Maguire could receive a bolt and that the vertical member does engage the frame". The Examiner supports this assertion by stating that "it is common to use bolts in order to more securely position devices". However, Maguire does not disclose or suggest any horizontal member receiving a bolt, or being potentially being modified to receive a bolt. In fact, Maguire discloses in column 1, lines 42-45, "the nut and bolt fastening arrangement permits removal by vandals, and the relatively high profile subjects the insert to destruction by snow plows, street cleaning equipment, or the like". Maguire recognizes these issues as problems because neither Maguire, the prior art made of record in the

instant application, nor the prior art recognized by Maguire, includes the flange of the present invention, configured as described in the specification and claimed in claim 1, from which claims 9 and 10 depend. It is precisely the flange of the present invention that allows the bolt to be countersunk, such that the bolt is less accessible to vandals and protected from snow plows, street cleaning equipment, and the like. Therefore, Maguire explicitly teaches away from securing his protective insert 10 or grating with a nut and bolt. Thus, the Examiner's assertion is simply not a properly supported prima facie case of obviousness. Specifically, the Examiner's assertion lacks prior art references that teach all of the claim limitations and some suggestion or motivation, to modify the reference or combine their teachings.

Furthermore, as previously argued, Maguire's protective insert 10 is secured by sliding it down over his grating 4. Clearly, sliding Maguire's protective insert 10, or any part thereof, "upwardly" would tend to detach the protective insert 10 from the grate 4 and surely disengage it from any frame. Therefore, Maguire actually teaches away from a locking element engaging a frame by sliding upwardly, as claimed in claim 10. Thus, as discussed above, the Examiner's assertion is simply not a properly supported prima facie case of obviousness. As a result, Maguire simply does not disclose, suggest, or make obvious "wherein the locking element includes a substantially horizontal member operable to receive the bolt and at least one substantially vertical member engaging the frame by sliding upwardly and behind the shelves", as claimed in claim 10.

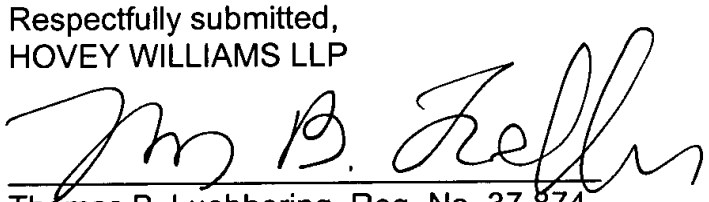
Claim 11 now recites "wherein the locking element is a flat bar attached to the grate adjacent a center of the grate". As clearly shown in Figures 5 and 7, the bolt penetrates the flange of the grate roughly in the center of the grate. It should be understood that centering the bolt in this manner provides uniform pressure along the edges of the grate. This, of course, balances and offsets any torque on the bolt, thereby maximizing the bolt's structural integrity and resistance to tampering.

In contrast, as clearly shown in the figures, Maguire only discloses his grate being attached around a perimeter. In fact, Maguire must be attached around a perimeter since it requires opposing pressure be applied to the downwardly extending shank members. Thus, Maguire simply does not disclose, suggest, or make obvious "wherein the locking element is a flat bar attached to the grate adjacent a center of the grate", as claimed in claim 11.

New claims 27-32 essentially include novel combinations of the limitations discussed above, as well as additional limitations, and are therefore also allowable. The remaining claims all depend directly or indirectly from independent claim 1, and are therefore also allowable. In view of the foregoing, a Notice of Allowance appears to be in order and such is courteously solicited.

Any additional fee which is due in connection with this amendment should be applied against our Deposit Account No. 19-0522.

Respectfully submitted,
HOVEY WILLIAMS LLP

By: 

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